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CLEARINGHOUSE RULE 95-169

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

It is not clear that there is statutory authority for s. Tax 2.12 (7). Section Tax 2.12 (7) (a) provides that the reduction of income resulting from renegotiation or price redetermination of any defense contract or subcontract is allowable as a deduction from income by filing an amended return for the year in which the income was reported for taxation. Section 71.30, Stats., which authorizes the filing of an amended return in these circumstances, provides that the claim for refund must be made within one year after the final determination of the renegotiation or price redetermination. Section Tax 2.12 (7) (a) does not contain this time limitation. In addition, s. Tax 2.12 (7) (b) provides that when a portion of the profits from any defense contract or subcontract originally determined to be excessive is rebated to the taxpayer by the federal government, the rebate is treated as a further renegotiation adjustment and shall be accounted for by an amended return to pay additional taxes. This provision of the Administrative Code does not contain any of the time limits for collecting additional taxes provided under s. 71.77, Stats. The department should explain its statutory authority for the provisions of s. Tax 2.12 (7) discussed in this comment.

2. Form, Style and Placement in Administrative Code

a. The acronym “OCR” as used in s. Tax 2.09 (2) (b), should be defined if it is used elsewhere in the Administrative Code. [See s. 1.01 (8), Manual.]

b. In s. Tax 2.105 (4) (a) 1. a., the references to “subdivision paragraph b, c, d or e” should be drafted to read “subd. 1. b., c., d. or e.” [See s. 1.07 (2), Manual.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Section Tax 2.09 (2) (e) provides that the size of reproduced tax forms shall be the same as that of the official form “except as provided by the department.” If the department intends to make exceptions regarding the size of reproduced tax forms, it should do so by administrative rule or explain how a person may determine if the department has made an exception.

b. It is suggested that the phrase “Where the” as used in s. Tax 2.09 (3) (b) be replaced with the word “If.”

c. In the second sentence of s. Tax 2.105 (3) (b), a more specific reference to “the limitations referred to in this paragraph” should be provided. As drafted, the sentence is not clear whether the quoted language refers to the 90-day limitation referred to in the first sentence of s. Tax 2.105 (3) (b) or to the situation described in s. Tax. 2.105 (5), or both.

d. In s. Tax 2.105 (5) (b), it is suggested that the phrase “correct income” be replaced with the phrase “correct net income.” [See s. 71.77 (7) (a), Stats.]